

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SUPPLEMENTAL DOCKET NUMBER 1
FOR THE REGULAR MEETING OF
MONDAY, MARCH 27, 2006 AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

**ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS
ORDINANCES TO BE INTRODUCED:**

ITEM-S400: Nonexclusive Chilled Water Franchise Agreement with JMIR-Chilled Water LLC, for Temperature Controlled Water Located in the Ballpark District.

(Ballpark District Community Area. District 2.)

(Continued from the meeting of March 21, 2006, Item 53, at the request of Councilmember Frye, for further review.)

CITY ATTORNEY’S RECOMMENDATION:

Introduce the following ordinance:

(O-2006-97 Cor. Copy)

Introduction of an Ordinance authorizing and empowering the Mayor, for and on behalf of the City, to execute a non-exclusive Chilled Water Franchise Agreement between the City of San Diego and JMIR-Chilled Water LLC, under the terms and conditions set forth in the Chilled Water Franchise Agreement;

Declaring this activity is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(4) because this activity is the creation of a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment.

NOTE: 6 votes required.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)
ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-S400: (Continued)

SUPPORTING INFORMATION:

Rather than construct separate heating and cooling facilities for each of the Ballpark, Omni Hotel, and their other development responsibilities in the Ballpark District, Padres/JMI Realty (JMI) constructed a central chilled water system (Chilled Water System), located on the D1 - D2 lots. The City, through the Centre City Development Corporation, permitted the necessary placement of pipes in the public right-of-way to serve those specific locations only pursuant to permanent encroachment permits. A franchise agreement with the City is required, however, for JMI to sell chilled water to other development within the Ballpark District. JMI is proposing that the City grant a non-exclusive franchise, conveying the right to use the City's streets for the purpose of constructing, maintaining, and operating a Chilled Water System for provision of temperature controlled water (Service) in the Ballpark District.

The proposed franchise agreement (Agreement) is between the City and JMIR-Chilled Water LLC, a Delaware limited liability company (Grantee). Pursuant to the Agreement, the Grantee will make the Service available to facilities within the Ballpark District, including facilities that are owned or controlled by the City (e.g., the Ballpark and proposed new main library), the Redevelopment Agency of the City of San Diego, the Centre City Development Corporation, and the Metropolitan Transit Development Board (Public Projects). The Grantee is not responsible for paying the franchise fee for Service (Exempt Gross Receipts) provided to the Public Projects, as well as projects which JMI or its affiliates control. Or have a substantial ownership interest in (i.e., an ownership interest of 25% or more); projects which were developed as part of Phase 1 of the Ballpark District; and the Omni residential condominiums (collectively Exempt Projects). The Grantee will pay a franchise fee of 5% of "non-exempt gross receipts." Non-exempt gross receipts means all gross operating revenues received by the Grantee from the sale of the Service within the Ballpark District less Exempt Gross Receipts. The franchise fee is equivalent to the franchise fee imposed on cable franchised and is more than what currently is paid by SDG&E for its franchise.

The term of the Agreement is fifty years. The Agreement contains standard franchise agreement language respecting: relocation of facilities at the Grantee's own cost and expense when required to do so by the City; restoration of the public right-of-way disturbed by the construction, operation, or removal of the Chilled Water System; and payment of the City's trench cut fee and related warranties. The franchise may not be transferred or assigned without the City's written consent. The Grantee is required to provide the City with a Security Fund in the amount of at least \$50,000, as security for the faithful performance of the provisions of the Agreement, and is responsible for paying any possessory interest tax that may be levied by the County.

All franchise fee receipts and Security funds resulting from this agreement will be deposited in to the General Fund (Fund 100).

Haas/Salt